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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/484,548	01/18/2000	Jules Gauthier	FMTIP025	9815
28802	7590	02/26/2004	EXAMINER	
AFX INC. 47929 FREMONT BLVD FREMONT, CA 94538			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	25
DATE MAILED: 02/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/484,548	GAUTHIER ET AL.
	Examiner	Art Unit
	DAVID J ISABELLA	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 January 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 81,82,84,86 and 88-123 is/are pending in the application.

4a) Of the above claim(s) 112-117 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 81,82,84,86 and 88-111,118-123 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 81,82,84,86,88-111,118 are rejected under 35 U.S.C. 102(b,e ) as being anticipated by McGee, et al and Cox, et al.

McGee, et al (102b) discloses an energy delivery device comprising a flexible ablation assembly including an ablation device and means for directionally controlling the emitted energy.

Claim 82, the energy is sufficient to ablate biological tissue (see column 2, lines 52+).

Claim 83, see outer ablation surface 40.

Claim 84, see column 2, lines 48+.

Claims 86,-88, see figure 6.

Claims 102-110 see figures 7 and 14.

Cox et al discloses (102e) discloses an energy delivery device comprising a flexible ablation assembly including an ablation device and means for directionally controlling the emitted energy.

Claim 82, the energy is sufficient to ablate biological tissue (see column 2)

Claim 84, see column 3.

Claims 86,88-92, see figures 37-42.

Claims 93-101, see columns 3 and 4.

Claims 102-110 see figures 37-42.

Claims 111 and 118, see rejection to claim 81 supra.

Applicant's arguments are not commensurate with the scope of the the claims.

The ablation assembly of Cox and McGee et al are operably disposed within the body portion as broadly claimed by applicant. The claims fail to set forth structure to support the function of no direct contact with target tissue. Moreover, the claims, as worded, do not preclude a probe that is in direct contact with the target tissue.

***Claim Rejections - 35 USC § 102***

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 81,82,84,86,88-90,101-111,118-123 are rejected under 35 U.S.C. 102(b) as being anticipated by Roth,et al (5207672).

Roth, et al discloses an energy delivery device for ablating tissue comprising a flexible ablation assembly including a device having a flexible body portion defining an outer surface and at least one ablation element operably disposed within the body portion; and means for directionally controlling the energy emitted therefrom.

Claim 82, see column 14, lines 40+.

Claim 84, the see fibers 104.

Claim 86, see figures 4-6.

Claims 88-90,101-111,118-123, see column 12, lines 20+.

***Double Patenting***

Claims 93-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6312427. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are directed to a flexible ablation assembly including a flexible body portion with at least one ablation element disposed

therein and means for directionally controlling the microwave ablation energy emitted therefrom which are clearly encompassed by the claims of patent 6312427.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
February 20, 2004